SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 121, Miscellaneous

SAMUEL TAYLOR, PETITIONER,

vs.

TENNYSON DENNIS, WARDEN, ALABAMA STATE PENITENTIARY, KILBY, ALABAMA

ON WRIT OF CERTIORARI

INDEX

	Original	Print
Record from D. C. U. S., Middle District of Alabama	1	1
Petition for writ of habeas corpus	1	1
Rule to show cause	6	5
Affidavit and motion for leave to proceed in forma pauperis	7	6
Order granting leave to proceed in forma pauperis	9	7
Return to rule	10	8
Order dismissing petition for writ of habeas corpus	13	9
Order of U. S. Court of Appeals denying petition for certificate of probable cause for an appeal	15	11
Motion for certificate of probable cause for an appeal	16	11
Order denying motion for certificate of probable cause for an appeal	17	12
Clerk's certificate (omitted in printing)	18	
Proceedings in U. S. C. C. A., Fifth Circuit	19	13
Petition for certificate of probable cause for an appeal	19	13
Order denying petition for certificate of probable cause for an appeal	21	14
Clerk's certificate (omitted in printing)	22	
Order granting motions for leave to proceed in forma pauperis and for leave to file petition for writ of certiorari, and granting petition for certiorari	23	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 21, 1948.

—9985



POOR COPY

BLEED THROUGH

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Civil Action No. 533-N

SAMUEL TAYLOR, Petitioner,

vs.

TENNYSON DENNIS, Warden, Alabama State Penitentiary, Kilby, Alabama, Respondent

PETITION FOR WRIT OF HABEAS CORPUS—Filed July 6, 1948

[fol. 2] Your Petitioner, Samuel Taylor, respectfully represents and shows unto this court that he is a citizen of the United States of America and of the State of Alabama; that he is at the present time unjustly and unlawfully detained and imprisoned at the State Penitentiary, Kilby, Alabama by Respondent, Tennyson Dennis as Warden of said prison by virtue of a judgment and sentence of death by electrocution pronounced upon him by the Circuit Court of Mobile County, Alabama on November 19, 1946 on a charge of rape, from which judgment Petitioner prosecuted an appeal to the Supreme Court of Alabama where the said judgment was affirmed on the 24th day of April, 1947, the style of the cause being Samuel Taylor versus the State of Alabama, First Division #279 and reported in Vol. 30, Southern Reporter, Second Series, at page 256.

On September 18, 1947, Petitioner filed in the Supreme Court of the State of Alabama a petition for Writ of Error Coram Nobis on the grounds that his said conviction and sentence was based on a confession which was introduced in evidence on the trial of said cause against Petitioner, which said confession was coerced and was not freely and voluntarily made by your Petitioner. The Supreme Court of Alabama on November 13, 1947 denied the petition of your Petitioner and on December 4, 1947 overruled Petitioner's application for rehearing, the opinion of said court being reported in Volume 32, Southern Reporter, Second Series, at

page 659. On March 3, 1948, Petitioner applied to the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the Supreme Court of Alabama in denying him leave to file a petition for Writ of Error Coram Nobis in the Circuit Court of Mobile County, Alabama. Certiorari was granted by the United States Supreme Court [fol. 3] on April 5, 1948 and the judgment of the Alabama Supreme Court affirmed on June 21, 1948. (Taylor v. Alabama, Oct. 1947 Term, No. 721).

Your Petitioner further shows that said judgment, verdict and sentence of death were based on an alleged confession which was introduced as evidence on the trial of said cause by the State of Alabama. That said confession was obtained by the use of force, fear, intimidation, and threat inflicted on and against your Petitioner; that said confession was not freely and voluntarily made by your Petitioner, and that as a consequence thereof, his said conviction and sentence as aforesaid is void by virtue of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

That these specific facts relating to the involuntary and coerced nature of said confession are as follows: That Petitioner was arrested by police officers of the City of Prichard, Alabama at 11:30 P.M. on June 29, 1946. That there were arrested at the same time as your Petitioner, three other Negro men, to-wit: Lawrence H. Franklin, Johnnie Kimbrough and Calvin Jones. That your Petitioner and these three men were taken into the City Jail at Prichard, Alabama. That before they were docketed or placed in a cell, the police officers on duty at that time whose names are unknown to your Petitioner, beat, kicked and bruised Petitioner and said three men in an effort to obtain a confession of a robbery.

That after Petitioner and the three other prisoners were docketed they were taken by said police officers one at a time in a small room in said jail. That all four of said men were brutally beaten, kicked and bruised in an effort to obtain said confession. That your Petitioner did, in fact, confess to said robbery but that after he had made this confession, he was retained in said room in the Prichard, Alabama jail by said police officers and told that he must make a confession of the rape for which he was later con-

POOR COPY

BLEED THROUGH

victed and sentenced by the Circuit Court of Mobile County as aforesaid. That he was further beaten, kicked and bruised by said police officers but refused to make a confession of said rape. That he was thereafter returned to his cell in the said City Jail at Prichard, Alabama by said police officers at an early hour in the morning of Sunday, June 30, 1946. That he was no further molested throughout the day of said Sunday but that during the late hours of Sunday night, June 30, 1946, and early morning July 1, 1946, he was further beaten, bruised and threatened as aforesaid. That said mistreatment and questioning by the [fol. 4] police officers of the City of Prichard continued for a period of several hours and upon Petitioner's failure to confess to said crime he was again returned to his cell where he was left unmolested throughout the day of Monday, July 1, 1946. That on the night of Monday, July 1, 1946 and the early morning of Tuesday, July 2, 1946, Petitioner was again subjected to similar mistreatment and questioning as on the previous night. Again your Petitioner maintained his innocence of said crime and after several hours was returned to his cell where he was left unmolested until the night of Tuesday, July 2 and early morning of Wednesday, July 3, 1946. On that night he was again visited by the police officers of the City of Prichard as aforesaid and was subjected to more brutal and cruel beatings and mistreatment. He was told unless he did confess to the crime of rape as aforesaid he would be continually subjected to such brutal mistreatment and intimidation until he did, in fact, confess to said crime. That your Petitioner was so fearful for his life, health and safety that he made a confession of said crime in the early morning hours of Wednesday, July 3, 1946. He was told by said police officers of the City of Prichard that if he made any mention of the fact that he was beaten and mistreated as aforesaid that he would be subjected to even more cruel beatings and mistreatment. That at approximately three o'clock in the morning of July 3, 1946, Petitioner was brought in to a carefully selected and arranged group for a formal confession of said crime of rape. That none of the persons who witnessed said formal confession which was later introduced in evidence on the trial of said cause as aforesaid had any knowledge of the fact that Petitioner had been beaten,

threatened, abused and mistreated by the said police officers of the City of Prichard as aforesaid, in order to obtain said confession, with the exception of Prichard Police Sergeant "Buster" Wilkes who had participated in the beatings of Petitioner since his arrest on Saturday, June 29, 1946.

That your Petitioner is a Negro who at that time was nineteen years of age and had very little schooling and was ignorant of his rights and priviledges as a citizen of the United States and more particularly was unaware of the protection guaranteed to him by the due process laws of the Constitution of the United States and the Fourteenth Amendment thereof, and as a consequence thereof, Peti- [fol. 5] tioner failed to mention the cruel and inhumane treatment to which he was subjected by the said police of the City of Prichard, Alabama to his attorney who represented him on the trial of said cause in the Circuit Court of Mobile County, Alabama, being ignorant of his rights as aforesaid and of court procedure. That your Petitioner's present counsel was not advised of the above facts until after the Petitioner's conviction and the preparation and filing of the motion for a new trial and the overruling of said motion by the said Circuit Court of Mobile County, Alabama and the appealing of the Petitioner's cause and the docketing of same and the decision of the Supreme Court of Alabama as aforesaid.

Your Petitioner further avers that his imprisonment, conviction and sentence of death and his present imprisonment is the result of a deprivation of due process of law and of his rights guaranteed to your Petitioner by the Constitution of the United States of America, in that the law enforcement officers of the State of Alabama obtained his conviction by the introduction in evidence at the trial of said cause of a confession which was forceably extorted from your Petitioner as aforesaid, thereby denying to him due process of law and the rights guaranteed to him by and under the Fourteenth Amendment of the Constitution of the United States of America.

Wherefore, to be relieved of said unlawful detention, imprisonment and sentence of death, your Petitioner prays that a Writ of Habeas Corpus, directed to the said Tennyson Dennis, Warden of the Alabama State Penitentiary, Kilby, Alabama, may issue in his behalf so that your Petitioner

POOR COPY

BLEED THROUGH

may be forthwith brought before this Court, to do, submit to and receive what the law may direct.

Samuel Taylor.

Nesbitt Elmore, Attorney for Petitioner.

Duly sworn to by Samuel Taylor. Jurat omitted in printing.

[File endorsement omitted.]

Respondent accepts service of this petition.
7-7-48 Bernard F. Sykes.

[fol. 6] In the District Court of the United States

[Title omitted]

Rule to Show Cause—Filed July 7, 1948

Petitioner, Samuel Taylor, filed in this court, on July 6, 1948, his petition for a writ of habeas corpus for his release from imprisonment from Kilby Prison and the custody of Tennyson Dennis, as Warden of said Kilby Prison.

It is now ordered that a rule of this court issue, and the same is now issued, to Honorable Albert Carmichael, Attorney General of the State of Alabama, commanding him as such Attorney General of the State of Alabama, to appear at 2:30 p.m., Wednesday, July 7, 1948, in the United States Court Room, at Montgomery, Alabama, if he deems proper to do so, and show cause, if any there be, why said writ of habeas corpus should not issue.

This rule shall be served on Albert Carmichael, as Attorney General of the State of Alabama, and he, or one of his duly authorized assistants may accept service of the same.

Done at Montgomery, Alabama, this 7th day of July, 1948.

C. B. Kennamer, United States District Judge.

I hereby accept service of the foregoing rule on this the 7th day of July, 1948, at Montgomery, Alabama.

Bernard F. Sykes, Assistant Attorney General of the State of Alabama.

[File endorsement omitted.]

[fol. 7] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT AND MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—Filed July 7, 1948

To The Honorable, Charles Kennamer, Judge of the United States District Court for the Middle District of Alabama:

Petitioner, Samuel Taylor, respectfully moves this Court for leave to proceed in forma pauperis for and by such relief as in the opinion of the Court his case may properly entitle him, and in support of such motion shows:

1. That he is a citizen of the United States of America and a resident of Mobile County, Alabama, and is a Negro. That he is under sentence of death, having been convicted in the Circuit Court of Mobile County, Alabama, on the 19th day of November, 1946, and on appeal his conviction was affirmed by the Supreme Court of Alabama on the 24th day of April, 1947. That subsequently on the 13th day of November, 1947, the Supreme Court of the State of Alabama denied petitioner leave to file an Application for Writ of Error Coram Nobis before the Circuit Court of Mobile County, Alabama, and on the 4th day of December, 1947, denied petitioner's application for rehearing of his petition for leave to file his said application for Writ of Error Coram Nobis. On March 3, 1948, Petitioner applied to the Supreme Court of the United States for a Writ of Certiorari to review the judgment of the Supreme Court of Alabama in denying him leave to file a petition for Writ of Error Coram Nobis in the Circuit Court of Mobile County, Alabama. Certiorari was granted by the United States [fol. 8] Supreme Court on April 5, 1948 and the judgment of the Alabama Supreme Court affirmed on June 21, 1948. (Taylor v. Alabama, Oct. 1947 Term, No. 721).

2. Petitioner avers that on his trial in the Circuit Court of Mobile County, Alabama he was denied due process of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

Petitioner now shows that there is no other Court to which he can appeal for relief save to the District Court of the United States for the Middle District of Alabama and

POOR COPY

BLEED THROUGH

that he cannot proceed in that Court unless he is allowed to do so under Pauper's Oath.

3. Petitioner further avers that he has no property, real, personal or mixed; that he is now, and has been since his arrest, destitute; that his parents have no funds or property out of which the costs of this proceeding could be paid; and that neither he nor his parents have been able to, nor can they, obtain the money to pay for the costs and expenses of this review, being wholly dependent upon gratuitous charity for any assistance on this proceeding for review of his conviction.

4. Petitioner avers further that in his trial below, the State of Alabama denied him due process of law by admitting in the evidence a confession obtained from petitioner by officers of Mobile County, Alabama, through the use of cruel, brutal and inhuman treatment.

5. Petitioner has been informed by Counsel that it is his belief that he has been tried, convicted and sentenced without due process of law, and this petitioner verily believes. Petitioner likewise says that he is entitled to the relief he seeks in this proceeding, being so informed by Counsel, and he avers that he does not proceed herein for purpose of delay.

Wherefore, the premises considered, Petitioner now requests this Honorable Court to enter a proper order that he may proceed in the prosecution of this cause *in forma pauperis*, by such procedure as by law he may be entitled; and for such other and different relief to which he may be entitled.

Samuel Taylor, Petitioner.

[fol. 9] *Duly sworn to by Samuel Taylor, jurat omitted in printing.*

In the District Court of the United States

Order Granting Leave to Proceed in Forma Pauperis—Filed July 7, 1948

The foregoing affidavit and motion for leave to proceed in forma pauperis having been considered and understood by the court,

It is ordered that the same be, and is, granted, and the Petitioner may proceed in this court in the prosecution of his petition for a writ of habeas corpus in forma pauperis.
This 7th day of July, 1948.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 10] In the District Court of the United States

[Title omitted]

Return to Rule—Filed July 7, 1948

Comes the State of Alabama, by and through its Attorney General, in behalf of the respondent, Warden of Kilby Prison, and appears specially and for no other purpose, and, without admitting even for the purpose of argument the allegations of the petition, says that the United States District Court should not issue a writ of habeas corpus in the above styled cause for the following separate and several reasons:

1. For that the issues sought to be raised by said petition have been raised in the Supreme Court of Alabama and in the Supreme Court of the United States, and have been decided adversely to the petitioner.

2. For that said petition presents no exceptional nor unusual circumstances of peculiar urgency calling for the exercise of federal jurisdiction over a state prisoner.

3. For that the issue sought to be raised by said petition, to-wit, whether or not a confession or confessions, which were introduced in evidence on petitioner's trial, were voluntary or involuntary, has been raised in the Supreme Court of the State of Alabama on coram nobis proceedings [fol. 11] and there decided adversely to the petitioner, and that after said adverse decision said issue was also determined adversely to the petitioner in the Supreme Court of the United States.

4. For that this court in this proceeding should not re-examine the questions and issues already adjudicated.

POOR COPY

BLEED THROUGH

5. For that in the exercise of its discretion orderly procedure requires that the District Court should not issue the writ of habeas corpus.

6. For that it has been decided both by the Supreme Court of Alabama and the Supreme Court of the United States that petitioner has been accorded due process of law, and has not been deprived of his life or liberty without due process of law.

7. For that said petitioner has not applied to the United States Supreme Court for a writ of habeas corpus, nor has he applied to said court for leave to apply to the District Court of the United States for a writ of habeas corpus.

[fol. 12] Wherefore, respondent prays that this court should not issue a writ of habeas corpus, and further that said respondent should not be required to answer further or make return to said petition, and that the petition should be dismissed and petitioner remanded to the custody of respondent.

A. A. Carmichael, Attorney General; Bernard F. Sykes, Assistant Attorney General; James L. Screws, Assistant Attorney General, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 13] In the District Court of the United States for the Middle District of Alabama, Northern Division

Civil Action No. 533-N

Samuel Taylor, Petitioner

vs.

Tennyson Dennis, Warden, Alabama State Penitentiary, Kilby, Alabama, Respondent

Order Dismissing Petition for Writ of Habeas Corpus—Filed July 8, 1948

This cause coming on to be heard on this the 7th day of July, 1948, and the petitioner, Samuel Taylor, being present in open court and being represented by counsel, the

court proceeds to hear argument of counsel on the petition for writ of habeas corpus, the rule heretofore issued by this court to the respondent to show cause why the writ of habeas corpus should not issue and the motion filed by the respondent; and,

The court is of the opinion that the motion is well taken,

It is therefore considered, ordered, adjudged, and decreed that the motion of respondent be granted and that said petition for writ of habeas corpus be dismissed, and the petitioner is remanded to custody of the Warden of Kilby Prison.

The court is of the opinion that the identical issues sought to be raised by the allegations of the petition have been raised in the Supreme Court of Alabama in coram nobis proceedings by this petitioner; the court further finds that those issues were inquired into by the Supreme Court of Alabama and for reasons and upon proof satisfactory to the State Supreme Court relief was denied to the petitioner; further that the said judgment of the Supreme Court of Alabama was affirmed by the Supreme Court of the United [fol. 14] States, and said United States Supreme Court having found that the remedy afforded petitioner in the State Supreme Court was in compliance with the Fourteenth Amendment to the United States Constitution,

In the exercise of its discretion to grant or refuse the writ of habeas corpus, this court has given weight to the judgments, opinions, and the matters referred to in the opinions of the Supreme Court of Alabama and of the United States Supreme Court in this case, and this court is of the opinion that in view of said opinions and judgments, and the history of said case that a further hearing is not required by the Constitution of the United States.

Dated this the 7th day of July, 1948.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

POOR COPY

BLEED THROUGH

[fol. 15] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

ORDER DENYING PETITION FOR CERTIFICATE OF PROBABLE CAUSE

It is ordered that the Petition for a certificate of probable cause for an appeal to this court, from the judgment of the United States District Court for the Middle District of Alabama, denying Petitioner a Writ of Habeas Corpus in the above styled cause be, and the same is hereby denied, Samuel Taylor, Petitioner, v. State of Alabama, United States Supreme Court, decided June 21, 1948; Taylor v. State, 249 Ala. 130; Ex Parte Taylor, 249 Ala. 667; 28 USCA, Sections 452 and 466.

Leon McCord, U. S. Circuit Judge, Fifth Circuit Court of Appeals.

Filed July 12, 1948. O. D. Street, Jr., Clerk.

[fol. 16] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION FOR CERTIFICATE OF PROBABLE CAUSE—Filed July 17, 1948

To the Honorable Charles B. Kennamer, Judge of Said Court:

Comes now the Petitioner in the above styled cause and moves the Court for a certificate of probable cause for an appeal to the United States Circuit Court of Appeals for the Fifth Judicial Circuit from the judgment of this Court dismissing Petitioner's application for Writ of Habeas Corpus, which said judgment was rendered by this Court on July 7, 1948.

Nesbitt Elmore, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 17] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER DENYING MOTION FOR CERTIFICATE OF PROBABLE CAUSE —Filed July 17, 1948

On the 7th day of July, 1948, when the petition of the petitioner Samuel Taylor, for the issuance of a writ of Habeas Corpus, was heard by this court on a rule issued to the Attorney General of Alabama to show cause why such writ of habeas corpus should not issue, and the Attorney General of Alabama having appeared and filed a motion to dismiss the said petition for the issuance of said writ of habeas corpus, and the court, after a full hearing of counsel for the petitioner and for the Attorney General, was of the opinion, and so found, that the motion to dismiss the petition for said writ of habeas corpus was well founded, and this court entered an order and judgment dismissing said petition, and stated orally that this court would decline to make a certificate of probable cause for an appeal to the circuit court of appeals for the fifth circuit, the Attorney for the petitioner made application to Honorable Leon McCord, one of the judges of the fifth circuit court of appeals for a certificate of probable cause for such appeal, and said application was denied by Judge McCord. Thereafter a formal written petition was presented to this court for a certificate of probable cause. This petition having been understood and considered by the court, it is ordered that the same be, and is, denied.

This 17th day of July, 1948.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 18] Clerk's Certificate to foregoing transcript omitted in printing.

POOR COPY

BLEED THROUGH

[fol. 19] [File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 12441

SAMUEL TAYLOR, Petitioner,

vs.

TENNYSON DENNIS, Warden, Alabama State Penitentiary, Kilby, Alabama, Respondent

PETITION FOR CERTIFICATE OF PROBABLE CAUSE—Filed July 16, 1948

To the Honorable Judges of said Court:

Your Petitioner, Samuel Taylor, respectfully shows unto the Court as follows:

1. That on July 6, 1948 he filed with the United States District Court for the Middle District of Alabama a petition for Writ of Habeas Corpus by Virtue of a process issued out of an Alabama State Court, to-wit: the Circuit Court of Mobile County, Alabama and the Supreme Court of Alabama, which said petition averred in substance that Petitioner is at the present time imprisoned and under sentence of death by virtue of a conviction and judgment by the Circuit Court of Mobile County, Alabama for the crime of rape; that there was introduced in evidence against Petitioner on the trial of said cause in the Circuit Court of Mobile County, Alabama a confession which was extorted from him by the use of threats and violence, which said confession was not freely and voluntarily made by your Petitioner; that your Petitioner had exhausted his state remedites and prayed the United States District Court for a hearing on the issued raised in his said petition.

2. The said United States District Court for the Middle District of Alabama upon filing of said petition issued to the State of Alabama a rule to show cause why the Writ of Habeas Corpus should not be granted. The State of Alabama filed a motion to dismiss the petition on substantially the grounds that the issues raised had been adjudicated by

the Supreme Court of Alabama and the Supreme Court [fol. 20] of the United States. The said United States District Court for the Middle District of Alabama dismissed on said motion of the State of Alabama the petition for the Writ of Habeas Corpus without a hearing, and further denied to Petitioner certificate of probable cause to this Honorable Court existed.

Wherefore, Petitioner prays that there be issued by this Court a certificate that there exists probable cause for an appeal to this Court from the judgment of the United States District Court for the Middle District of Alabama.

(Signed) Nesbitt Elmore, Attorney for Petitioner.

[fol. 21] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR CERTIFICATE OF PROBABLE CAUSE

It is ordered that the Petition for a certificate of probable cause for an appeal to this court, from the judgment of the United States District Court for the Middle District of Alabama, denying Petitioner a Writ of Habeas Corpus in the above styled cause be, and the same is hereby denied. Samuel Taylor, Petitioner, v. State of Alabama, United States Supreme Court, decided June 21, 1948; Taylor v. State, 249 Ala. 130; Ex Parte Taylor, 249 Ala. 667; 28 USCA, Sections 452 and 466.

(Signed) Leon McCord, United States Circuit Judge, Fifth Circuit.

[fol. 22] Clerk's Certificate to foregoing transcript omitted in printing.

POOR COPY

BLEED THROUGH

[fol. 23] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 121, Misc.

On Motion for Leave to file petition for writ of certiorari.

ORDER GRANTING MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI, AND GRANTING PETITION FOR CERTIORARI—December 13, 1948

On Consideration of the motion for leave to proceed herein *in forma pauperis* and of the motion for leave to file petition for writ of certiorari, it is ordered by this Court that the said motions be, and they are hereby, granted.

The Petition for Certiorari is also granted and the case is transferred to the summary docket.

It Is Further Ordered that the duly certified copy of the transcript of the proceedings below which accompanied the motion and petition shall be treated as though filed in response to such writ.